

Hon. Ricardo S. Martinez

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

METROPOLITAN CASUALTY
INSURANCE CORPORATION,)
Plaintiffs,) No. C10-1062-RSM
v.)
BONNEVILLE POWER)
ADMINISTRATION, et al.,) UNITED STATES' ANSWER
Defendants.)

The United States of America (hereinafter “Defendant”), by and through its attorneys, Jenny A. Durkan, United States Attorney for the Western District of Washington, and Robert P. Brouillard, Assistant United States Attorney, hereby answers Plaintiff’s Complaint for Subrogation Damages in the Amount of \$10,005.10 (hereinafter “Complaint”), and asserts affirmative defenses, as follows:

1. JURISDICTION: Defendant admits that the motor vehicle accident at issue took place in King County, Washington. The remaining allegations in paragraph 1 consist of conclusions of law that require no response; to the extent a response is deemed required, Defendant denies same.

2. PLAINTIFF: Defendant admits the allegations in paragraph 2.

3. DEFENDANTS: Defendant admits the allegations in the first sentence of paragraph 3. Defendant denies for lack of knowledge or information sufficient to form a belief as to the truth thereof the allegations in the second sentence of paragraph 3. Defendant admits that the motor vehicle accident at issue took place in King County, Washington. The remaining allegations in the third and fourth sentences of paragraph 3 consist of conclusions of law that require no response; to the extent a response is deemed required, Defendant denies same.

3.1. Defendant denies for lack of knowledge or information sufficient to form a belief as to the truth thereof the allegations in paragraph 3.1.

4. ACCIDENT FACTS: Defendant admits that the motor vehicle accident at issue occurred on June 18, 2008, in Kent, King County, Washington, and that it involved the Plaintiff's insured and an employee of the Bonneville Power Administration ("BPA"), an agency of Defendant United States of America, who was acting within the course and scope of his employment with BPA at the time of the accident. Defendant denies for lack of knowledge or information sufficient to form a belief as to the truth thereof the remaining allegations in the first sentence of paragraph 4. Defendant denies for lack of knowledge or information sufficient to form a belief as to the truth thereof the allegations in the second sentence of paragraph 4.

5. Defendant denies for lack of knowledge or information sufficient to form a belief as to the truth thereof the allegations in the second sentence of paragraph 5.

To the extent Plaintiff's prayer for relief requires an answer, Defendant denies that Plaintiff is entitled to any of the relief it seeks.

All allegations contained in the Complaint not specifically admitted above are hereby denied.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are subject to the limitations of the Federal Tort Claims Act contained in 28 U.S.C. § 2680.

SECOND AFFIRMATIVE DEFENSE

Pursuant to 28 U.S.C. § 2675(b), Plaintiff's recovery of damages is limited to the amount presented, and damages identified, in Plaintiff's administrative tort claim. To the extent that

Plaintiff's prayer for relief exceeds the amount of the administrative claim, said amount must be stricken.

THIRD AFFIRMATIVE DEFENSE

Plaintiff is not entitled to interest, punitive damages, cost of the suit, or to a jury trial pursuant to the provisions of the Federal Tort Claims Act.

FOURTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff's complaint contains allegations of negligence or relief not raised in Plaintiff's administrative claim, the complaint is barred by 28 U.S.C. § 2675(a).

FIFTH AFFIRMATIVE DEFENSE

The United States reserves the right to plead all other affirmative defenses or any applicable state and federal statute which through discovery it learns may be applicable.

WHEREFORE, Defendant United States of America prays for judgment as follows:

1. For an order dismissing the Complaint in its entirety with prejudice;
 2. For an award of Defendant's costs and disbursements incurred in this action; and
 3. For such other and further relief as the court may deem just and proper.

DATED this 29th day of July, 2010.

Respectfully submitted,

JENNY A. DURKAN
United States Attorney

/s/ Robert P. Brouillard
ROBERT P. BROUILLARD, WSBA #19786
Assistant United States Attorney
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101
Phone: (206) 553-7970
Fax: (206) 553-4067
E-mail: robert.brouillard@usdoj.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the United States Attorney Office for the Western District of Washington and is a person of such age and discretion as to be competent to serve papers.

That on July 29, 2010, she electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the attorney(s) of record for the plaintiff(s):

Lisa Allison
Email: allisonlawgroup@gmail.com

To the person(s) who are non CM/ECF participants, service will be made via U.S. postal service, addressed as follows:

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DATED this 29th day of July, 2010.

s/Tina Litkie
TINA LITKIE
Legal Assistant
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
Phone: (206) 553-8639
Fax: (206) 553-4073
E-mail: tina.litkie@usdoj.gov